

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-180010.07

DATE: APR 14 1976

MATTER OF: Bureau of Reclamation Yakima Project -  
Implementation of Arbitrator's Award

DIGEST: Arbitrator's award setting effective date for increase in wage rates at Yakima Project Office, Bureau of Reclamation, may be fully implemented where governing collective-bargaining agreement calls for arbitration of unresolved negotiation issues involving wage rates, and record is clear that impasse existed on date collective-bargaining agreement became effective, and that, on same date, it was clear that there would be substantial increase in wage rates. Agencies and unions may negotiate preliminary agreement setting effective date for wage increases before exact amount of increase is known, therefore, arbitrator may resolve same issue.

This matter involves a request for an advance decision submitted by Ms. Jo Manzanares, an authorized certifying officer of the Engineering and Research Center, Bureau of Reclamation, Department of the Interior, concerning the authority for implementing an arbitrator's award which set the new wage rate and the effective date for that rate for nonsupervisory hourly employees of the agency's Yakima Project Office. The issues were submitted to arbitration, in accordance with the existing collective-bargaining agreement, following an impasse in negotiations between the agency and the union representing the employees.

The nonsupervisory hourly employees involved are represented by the International Brotherhood of Electrical Workers, Local Union No. 77, under a collective-bargaining agreement first signed in 1967 under the terms of Executive Order 10988, January 19, 1962, 27 F.R. 551. That Basic Agreement remained in effect until 1973 when the agency and the union began negotiations to revise the agreement to conform to the requirements of Executive Order 11491, October 29, 1969, 34 F.R. 17605, as amended. Work on the revision was completed at the local level in February 1974 and the revised Basic Agreement was forwarded to the Department of the Interior for review and approval. Wage rates in 1974 were resolved without regard to the proposed revision. Subsequently the revised Basic Agreement was approved on March 17, 1975.

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In addition to the Basic Agreement, Supplementary Agreements setting wage rates were negotiated on approximately an annual basis, but no uniform date served as the effective date for each change in wage rates. The effective dates for changes in the wage rates, as set out in the arbitrator's decision were: April 15, 1971; May 25, 1972; March 20, 1973 (approved by Regional Director on March 30, 1973); and May 30, 1974. Although these wage rate changes were negotiated, they were supposed to be substantially equal to the prevailing wages for comparable positions in the private sector in the area.

Negotiations for the 1975 wage rate adjustments began on January 29, 1975. By March 11, 1975, four negotiating sessions had been held, and, on that date, the parties reached an impasse with the agency offering \$8 per hour and the union seeking \$8.48 per hour for what was known as the "100 percent wage rate." The comparable rate then in effect was \$7.36 per hour. Therefore, when the parties reached an impasse on March 11, 1975, there was no real doubt that there would be a substantial increase in the wage rate; the only question was the exact amount of that increase.

The new Basic Agreement which was approved on March 17, 1975, contained the following provision, paragraph 5.2, relating to settlement of wage rate issues:

"Unresolved negotiation impasses involving wage rates will be referred to an arbitrator to be selected as provided under article 6.6. The decision of the arbitrator shall be binding on the parties subject to federal pay regulations and applicable decisions of the Comptroller General \* \* \*."

In accordance with that provision the union, on April 7, 1975, requested that the wage rate issue be taken to arbitration. The arbitrator was selected, a hearing was held July 16, 1975, and a decision was issued September 30, 1975. In that decision the arbitrator held that the new "100 percent wage rate" should be \$8.43 per hour, and that the effective date of the increase should be March 17, 1975, the effective date for the new Basic Agreement which contained the arbitration provision. There is nothing in the record to indicate that either party petitioned the Federal Labor Relations Council for a review of the arbitrator's award.

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During the arbitration, the agency did not argue that the arbitrator was not authorized to set the effective date for the change in the wage rates, instead they argued that the arbitrator could not make an award of retroactive pay, and, therefore, that the new rates could go into effect only after the rendition of the award. In answer to this argument, the arbitrator, in his decision, stated that:

"\* \* \* The parties had reached impasse on the wage rate issue on March 11, 1975, and the existence of this impasse was known to the Employer's representatives when the Employer's approval was given to the agreement on March 17, 1975. Thus they both knew that the wage rates to be put in effect for their new agreement had not been fixed by them. Indeed, as indicated by the statements of the Employer's negotiators at the March 10, 1975, meeting, the Employer suggested that if the agreement were approved the decision as to what was the appropriate wage rate would be made by an arbitrator. It therefore is appropriate to conclude that when the agreement was approved by the Employer's representatives, the parties had agreed that employees were to be paid for work performed thereafter at the rate of pay which would subsequently be fixed by an arbitrator's award. This construction of the agreement does leave it to subsequent events to fix the level of pay, but it does not make that payment retroactive any more than would, for example, an agreement that wage rates be adjusted for subsequent changes in the cost of living as reflected in the consumers' price index. Or, as another example, it may be impossible to predict in advance what supplement to pay an employee will receive under a profit sharing plan, but the subsequent payment of such amounts to an employee does not amount to a retroactive adjustment of pay if the formula for the later determination had previously been agreed upon. This construction of the agreement has the desirable effect of according employees in the public sector the treatment a similar controversy would receive in the private sector."

In B-183083, November 28, 1975, we were presented with the question of whether or not an agency and a union could negotiate, in

a preliminary agreement, an effective date for a wage increase, even though the exact amount of the increase was not known at that time. We held that such an agreement was permissible as long as the date set was no earlier than the date of the preliminary agreement setting that date. If the parties can set an effective date through negotiations, they can agree that the date may be set by the arbitrator in accordance with the collective-bargaining agreement. The rationale used by the arbitrator is essentially the same as that found in our decision, B-183083, supra. In this case it was clear on March 11, 1975, when an impasse was reached, that there would be an increase in the wage rates, the only question was the exact amount. On March 17, 1975, when the Basic Agreement was approved by the Department of the Interior, and went into effect, the method of resolving wage rate impasses became arbitration. The agreement to arbitrate wage rate issues is the functional equivalent to the preliminary agreement setting the effective date in B-183083, supra.

Accordingly, we have no objection to full implementation of the arbitrator's decision of September 30, 1975. With regard to negotiations leading to wage adjustments in the future, if there is no preliminary agreement setting an effective date, and the matter is submitted to arbitration, the effective date may be no earlier than the date impasse is reached, if that date can be precisely determined, or the date arbitration is requested. In either case, it must be clear on that date that there will be an increase in the wage rates, with only the exact amount still undecided.

R.F.KELLER

Deputy Comptroller General  
of the United States